IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2891 OF 2005

IN

CRIMINAL APPEAL NO.373 OF 2004

IN

SESSIONS CASE NO.1174 OF 1995

Raju Panchdev Vishwakarma ...Applicant

Versus

State of Maharashtra ...Respondent

.....

Mr.Rakesh Kumar i/b M/s.Legal Vision for Applicant.

Mr.V.B.Konde-Deshmukh, A.P.P. for Respondent.

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**CORAM: A.M.KHANWILKAR, J.**

**DECEMBER 12, 2005.**

**P.C.**

1. Heard Counsel for the parties. The offence in question is a serious offence. The Applicant has been found guilty of offence punishable under Section 376(2)(f) of the Indian Penal Code, which is punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may be for life and shall

also be liable to fine. Indeed, proviso to Section 376(2) stipulates that the Court may, for adequate and special reasons, to be mentioned in the Judgment, impose a sentence of imprisonment of either description for a term less that ten years.

2. In the present case, the prosecutrix at the relevant time was only six years of age for which, if the offence is proved, the case would be covered by Section 376(f). In this backdrop, I am not inclined to grant bail to the Applicant herein merely because he has undergone over two years of imprisonment since the pendency of the trial.

3. Instead, while rejecting this bail application, I direct that the appeal be heard as expeditiously as possible, to be listed in the week commencing from 30th January 2006. Learned A.P.P. for the State states that he will seek instructions from the State Government whether the State is inclined to move formal Petition for enhancement of sentence, as according to him, the reasons recorded in Para 17 of the impugned Judgment cannot be said to be sufficient to invoke the power under the

proviso to Section 376(2), as has been done by the lower Court.

4. Accordingly, this bail application is rejected with the above observations.

A.M.KHANWILKAR, J.